

**Board of County Commissioners
Leon County, Florida**

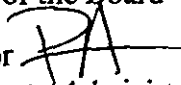
**Workshop on the Review of
Board Appointed Citizen Committees
and the Requirements of
Government-In-The-Sunshine, Public Records
and Code of Ethics Laws**

**2:00-3:00 P.M.
Tuesday, July 8, 2003**

**Leon County Board of County Commissioners Chambers
Leon County Courthouse, 5th Floor**

This document distributed: July 3, 2003

Board of County Commissioners Workshop Agenda

Date of Meeting: July 8, 2003
Date Submitted: July 2, 2003
To: Honorable Chairman and Members of the Board
From: Parwez Alam, County Administrator 
Lillian Bennett, Assistant to the County Administrator
Kim Dressel, Director Management Services
Sally Dowlen, Transportation Coordinator
Dan Rigo, Assistant County Attorney
Subject: Review of Board Appointed Citizen Committees and the Requirements of Government-In-the-Sunshine, Public Records and Code of Ethics Laws

Statement of Issue:

This workshop provides a review of the operation and structure of Board appointed Citizen Committees and a presentation of the associated requirements for compliance with Government-In-the-Sunshine (Sunshine Law), Public Records and Code of Ethics Laws. Recommendations will be provided on ways to improve the establishment, appointment, and functioning of Board appointed citizen committees and include a draft policy for Board review and consideration (Attachment #1).

Background:

The County Administrator appointed a team of staff to review the operation and structure of Board Appointed Citizen Committees and to identify the requirements for their compliance with applicable Government- in-the-Sunshine, Public Records and Code of Ethics Laws. This fact finding review team was charged with providing the County Administrator input on ways to improve the process for the establishment, appointment and functioning of Board appointed citizen committees. The staff persons appointed to perform the review include; Lillian Bennett (County Administration), Kim Dressel (Management Services); Sally Dowlen (Public Works), and Dan Rigo (County Attorneys Office).

The Sunshine, Public Records and Code of Ethics Laws have been established to provide a standard for public access to government proceedings, records and to establish acceptable standards of conduct for officials, employees and Board-appointed committee members. The consequences of violating these laws have recently been highly publicized in cases throughout the State of Florida. One high profile Florida Sunshine Law case was that of former Escambia County Commissioner W.D. Childers (Attachment # 2). Another local incident involving Code of Ethics violations was recently noted regarding employees of the Florida Lottery (Attachment #3)

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Analysis:

Leon County has a total of 43 active Board-appointed citizen committees. The title of each committee and a brief description of each is shown in Attachment #4. The review team met with the staff persons assigned to each of these committees and asked a series of questions regarding the operation and structure of each committee in relation to the requirements for compliance with applicable Florida Statutes on Florida Sunshine, Public Records and Code of Ethics Laws (Attachment #5).

The majority of these committees have been delegated authority by the Board to eliminate options and alternatives on various issues and bring back recommendations to the Board for final review and approval. Based on this review, staff has prepared a presentation that includes a review of the following issues regarding Board Appointed Citizen Committees:

- I. Summary/Impact of Florida Statutes:**
 - Government In the Sunshine, "Sunshine Law", (F.S. Section 286.011)
 - Public Records Law (F.S Chapter 119)
 - Code of Ethics for Public Officers and Employees (F.S. Chapter 112)
- II. Potential Liability/Exposure to Citizen Volunteers**
- III. Recommendations for Improvement**
- IV. Draft Proposed Policy for Volunteer Citizen Committees (Attachment #1)**

I. Summary/Impact of Florida Statutes

Florida's Government in the Sunshine Law, commonly referred as the Sunshine Law provides a right of access to governmental proceedings (or meetings) at both the state and local levels. As this law pertains to the Board, the law is equally applicable to Board appointed citizen committees and has been applied to any gathering of two or more members of the same citizen's committee to discuss a matter which will foreseeably come before the full committee for action. This includes casual discussions outside of a regularly scheduled meeting.

Whether or not a Board appointed citizen committee meetings are subject to Sunshine Law depends on the charge, function and type of committee. The Sunshine Law recognizes two types of Advisory Committees. They are Decision Making and Fact-Finding Committees. A summary of each is outlined below:

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Decision -Making Citizen Committees

A Board appointed Decision Making Committee is one that has been delegated authority by the Board to eliminate options and alternatives and bring back recommendations to the Board for final review and approval. This type of committee may have established bylaws and members take recorded votes on official actions taken. Staff usually serves only in a facilitator role and the recommendations of the committee are brought back to the Board by staff for final review and approval. Since the Board has delegated decision-making authority to this type of committee, it is subject to all of the requirements of the Sunshine Law. The three basic requirements of 286.011, F.S. include:

- (1) meetings must be open to the public;
- (2) reasonable notice of meetings must be given;
- (3) minutes of the meetings must be taken.

Decision making committees are subject to the Sunshine Law even though their recommendations are not binding upon the entities that create them. Essentially, even though the Board may not adopt the recommendations of a committee, the committee is still considered a decision-making committee under the Sunshine Law based on the authority delegated to the committee. This position was first expressed by the Florida Supreme Court in the *Gradison Case* and has been consistently followed by the Attorney General in several AGO Opinions that specifically address the delegated authority of decision-making committees (Attachment #6).

As such, committee members cannot discuss issues, even casually, outside of a scheduled and properly noticed meeting. These requirements must be followed or the volunteer citizen committee member(s) is subject to penalties associated with the noncompliance. In addition, subsequent Board actions taken based on a citizen committee's recommendation may also become null and void as a result of a committee Sunshine Law violation. Decision making committees are also subject to Public Records and Code of Ethics Laws regarding access to public documents, Standards of Conduct and Voting Conflicts.

Fact-Finding Citizen Committees(Focus/User Groups)

A Board appointed Fact-Finding Committee is an information gathering or input committee that has not been delegated authority to eliminate options or alternatives and bring back a final recommendation. This type of committee does not have decision making authority. This type of committee may not have by-laws and the committee members do not vote or take official action on any issue. The fact finding committee is usually a focus/user group that provides input to county staff on a specific issue. That input is then reviewed and analyzed by staff. Staff is then responsible for making the final recommendation to the Board, not the committee.

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A Fact Finding committee is not subject to the requirements of the Sunshine Law. As a result, the Board and the citizen committee members are not open to the potential impacts and consequences of sunshine law violations. The 2003 Government in the Sunshine Manual states: "When a committee has been established strictly for, and conducts only, fact finding activities, i.e., strictly information gathering and reporting, the activities of that committee are not subject to Section 286.011, F.S. AGO 95-06 states that (when a group, on behalf of a public entity, functions solely as a fact finder or information gatherer with no decision making authority, no "board or commission" subject to the Sunshine Law is created)."

While not subject to the Sunshine Law, Fact Finding committees are subject to the requirements of Public Records and Code of Ethics Laws regarding public access to documents and standards of conduct. Voting Conflicts Laws do not apply to fact finding committees, since no official votes are taken and no formal recommendations are made by the committee. They serve solely as a source of input and information gathering to staff.

II. Potential Liability/Exposure to Citizen Volunteers

Based on the review of Board-appointed citizen committees, the review team noted several areas in Leon County's Citizen Committee process that could create potential liabilities and exposures to Leon County. A summary of these potential liabilities/exposures are outlined as follows:

- No formal process exists for the establishment of committees and the selection and appointment of committee members that ensures compliance with Florida Sunshine, Public Records and Code of Ethics Laws.
- No Formal Orientation and Training Program exists for New and Current Citizen Committee Members and County staff on the requirements of Florida Sunshine, Public Records and Code of Ethics Laws as they apply to Board-appointed citizen committees.
- Subcommittees of Board-appointed citizen committees not always aware that Florida Sunshine, Public Records and Code of Ethics requirements also apply to them.
- No formal sunset or dissolution process established for most committees.

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- Citizen Committee members are volunteers, serving a public purpose, however they are placed in a position of potential challenges to and legal liability for violation of Florida Sunshine, Public Records and Code of Ethics Laws.
- Stakeholders may be appointed to citizen committees with potential Voting Conflicts.
- Board of County Commissioners' subsequent actions taken become null and void due to citizen committee violation of Florida Sunshine Laws.
- Recreation Councils and Community Center Boards at times function independently of the county and there is minimal or no County overview of fiscal activity (collection and expenditure of funds), annual audits and legal review of contracts and agreements. In a number of instances, no staff person is specifically assigned to attend meetings and monitor compliance with Sunshine, Public Records and Code of Ethics laws.
- No central location or custodian of Board appointed committee minutes.

III. Recommendations for Improvement

- Adopt a new County policy regarding the establishment of Volunteer Citizen Committees that reduces the potential for liability and exposure to Leon County and citizen committee members. Require all Board-appointed committees to comply with the new county policy.
- Limit the number of future citizen volunteer decision-making committees established by the Board.
- Direct staff to review the potential for the elimination or reduction of the number of Board-appointed committees that are not required under Florida Statutes and/or formed under County Ordinances (Attachment #7).
- Restructure current Board-appointed committees, where possible, from Decision-Making committees to Fact Finding Committees to eliminate or greatly reduce the liability and exposure involved in decision-making committees.

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- Restructure the Recreation Councils and Community Center Boards into 501(3)(c) nonprofit organizations. Enter into lease agreements that continue county services such as maintenance of facilities, payment of utilities and administrative assistance. This new structure releases the County from responsibility for the fiscal activity and the day to day operations and programming for the facilities and allows the community volunteers to operate independently. This arrangement also eliminates the potential liability and exposure to Leon County and its citizen volunteers for violation of Florida Statutes regarding Sunshine, Public Records and Code of Ethics. Direct staff to bring back an agenda item with a formal proposal of how this new 501(3)(c) structure would work for the Recreation Councils and Community Center Boards.
- Develop a formal review and approval process prior to the establishment of a Board-appointed Citizen committee. This review will include the following:
 1. The Charge and Purpose of the Committee (Board Member Committee Request Form - Attachment #8)
 2. Staff Analysis of the Type of Committee (Decision-Making or Fact Finding)
 3. Determination of Applicable Florida Statutes based on type of committee
 4. Adoption of Resolution to Formally establish Committee
 5. Outline Sunset and Dissolution provision of the committee
- Develop a formal process for the selection and appointment of citizen committee members. This process will include the following:
 1. **Committee Applications.** Require the submission of Citizen Committee Applications to establish a pool of interested citizen volunteers. A sample application is shown in Attachment #9. Staff request approval to begin the application process immediately for all new appointments and reappointments.
 2. **Application Review Team.** Establish an application review team consisting of a staff person from County Administration, County Attorney and the staff person assigned to the Committee. This application review team will be responsible for the following:
 - a. Identify stakeholders with potential voting conflicts and conflict of interest
 - b. Identify any potential applicants who are paid lobbyists.
 - c. Determine if Financial Disclosure is necessary.
 - d. Submit eligible applicants to the Board for selection and appointment.

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3. **Orientation and Training.** Develop a formal internet based training program on applicable Florida Sunshine, Public Records and Code of Ethics Laws for citizen committee members. Ensure all committee members understand these laws and the potential consequences if violations occur. Allow staff a 90 day time-frame to develop and implement the new training program.
- Develop a Template for By-Laws of all Leon County Board-appointed committees and require specific information is included regarding Florida Sunshine, Public Records and Code of Ethics Laws Requirements.

Other Recommendations Include:

- Establish a limit on the number of times a committee member is eligible to be reappointed to a committee to allow more opportunity for citizen participation.
- Develop and maintain a centralized custodial system for retention of all committee minutes and By-Laws on the County's Intranet.

IV. Draft Proposed Policy for Volunteer Citizen Committees (Attachment #1)

Staff has developed a draft proposed policy that incorporates the recommendations outlined in the workshop agenda item (Attachment #1). The new proposed policy replaces Policy No. 98-6, Volunteer Boards and Committees and Policy No. 97-9, Voting Conflicts on Boards, Committees, Councils and Authorities(Attachment #10). In summary, the new policy will improve county processes in the formation, selection and appointment of committees, provide a formal orientation and training program on Florida Statutes to volunteer committee members and reduce the potential liability to Leon County and its citizen volunteers for violation of Sunshine, Public Records and Code of Ethics Laws. Staff is requesting Board approval to proceed with the development and finalization of the new policy and bring back for Board adoption at the first meeting in August.

Options:

1. Accept staff report on the review of Board-appointed Citizen Committees and the requirements of Florida Sunshine, Public Records and Code of Ethics Laws.
2. Direct staff to implement the recommendations outlined in the workshop agenda and continue to develop and finalize the draft volunteer citizen committee policy (Attachment #1) to reduce potential liability and exposure to Leon County and the volunteers serving on Board appointed citizen committees. Bring back the finalized policy for Board approval at the first meeting in August.
3. Board Direction.

Recommendation:

Options 1 and 2.

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Attachments

1. Proposed New Policy on Board-appointed Volunteer Citizen Committees
2. Article on Sunshine Law Violation of former Escambia County Commissioner
3. An article of Florida Lottery Code of Ethics Violation
4. List of Board-appointed Committees
5. Questions for Staff Persons Assigned to Committees
6. Florida Supreme Court *Gradison Case* and AGO Opinions on Delegated Authority of Decision Making Committees
7. List of Committees Established by Florida Statute and/or County Ordinance and list of Optional Committees.
8. Board Member Committee Request Form
9. Sample Committee Member Application
10. Policy No. 98-6, Volunteer Boards and Committees and Policy No. 97-9, Voting Conflicts on Boards, Committees, Councils and Authorities